

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Lizamaris Delarosa,

Plaintiff,

-v-

1:11-CV-368 (NAM/CFH)

**United States of America, AUSA Craig Nolan,
ATF S/A Thomas M. Jusianiec, and T.F.O.
Thomas McCoy,**

Defendants.

APPEARANCES:

Lizamaris Delarosa
1 Barringer Street
Schenectady, New York 12304
Plaintiff, *pro se*

Hon. Richard S. Hartunian, United States Attorney
Charles E. Roberts, Esq., Assistant United States Attorney
100 South Clinton Street
Syracuse, New York 13261
Attorney for Defendants

Hon. Norman A. Mordue, Senior U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

Defendants moved for dismissal of this action and for sanctions based on plaintiff's failure to appear for a deposition. Upon referral pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c), United States Magistrate Judge Christian F. Hummel issued a Report and Recommendation recommending denial of the motion to dismiss and an award of sanctions in the sum of \$500 to be paid to defendants' counsel. There is no objection; therefore the Court reviews for clear error.

In recommending denial of dismissal based on plaintiff's failure to appear for her

deposition, Magistrate Judge Hummel properly reviewed the factors set forth in *Lucas v. Miles*, 84 F.3d 532, 535 (2d Cir. 1996). The Court agrees with his determination that, particularly in view of plaintiff's *pro se* status, the harsh remedy of dismissal is not appropriate and a lesser sanction of money sanctions is appropriate. The Court accepts his recommendation of sanctions in the sum of \$500.

THE COURT ADVISES PLAINTIFF THAT FAILURE TO APPEAR FOR HER DEPOSITION OR FAILURE TO COMPLY WITH COURT ORDERS MAY RESULT IN DISMISSAL OF THIS ACTION.

It is therefore

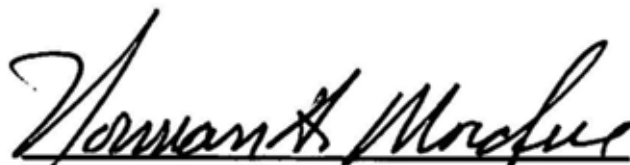
ORDERED that the Report and Recommendation of United States Magistrate Judge Christian F. Hummel (Dkt. No. 92) is accepted; and it is further

ORDERED that the motion by defendants for dismissal and/or sanctions (Dkt. No. 86) is granted in part and denied in part as recommended by Magistrate Judge Hummel; and it is further

ORDERED that the Clerk of the Court is directed to serve copies of this Memorandum-Decision and Order in accordance with the Local Rules of the Northern District of New York and shall serve plaintiff by certified mail, return receipt requested.

IT IS SO ORDERED.

DATED: January 28, 2016
Syracuse, New York


Norman A. Mordue
Senior U.S. District Judge